BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

IN RE:	Al-Jafari Othman	)
	Dist. B01, Block 58, Parcel 00879	) Shelby County
	Commercial Property	)
	Tax Year 2006	)

INITIAL DECISION AND ORDER
GRANTING MOTION FOR DIRECTED VERDICT

Statement of the Case

The subject property is presently subclassified commercially and valued as follows:

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$1,800,000	$ -0-	$1,800,000	$720,000

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on July 12, 2007 in Memphis. Tennessee. The taxpayer was represented by David C. Scruggs, Esq. The assessor of property was represented by John Zelinka, Esq.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of an unimproved 6.27 acre tract of partially wooded land located on Germantown Parkway in Bartlett, Tennessee. The taxpayer purchased subject property on April 27, 2005 for $1,000,000 from BankcorpSouth, which had acquired it one month earlier through foreclosure for $900,000.

The taxpayer contended that subject property should be subclassified residentially and valued at $120,200. With respect to the issue of value, Mr. Scruggs argued that with the exception of subject parcel the neighborhood has been systematically undervalued. In support of this position, Mr. Scruggs introduced an exhibit showing that subject parcel has been valued at 180% of its sale price ($6.59 per square foot) whereas other parcels are valued at only 9% to 17% of their sales prices (generally 35¢ to $1.01 per square foot) and predominantly subclassified residentially. See Exhibit A.

Mr. Scruggs maintained that the ruling of the Assessment Appeals Commission in *Peyton & Melissa Goldsmith* (Shelby Co., Tax Year 2001) ["*Goldsmith*"] requires the appraisal of subject property be comparable to other parcels in the neighborhood. Mr. Scruggs asserted that subject parcel should be appraised similarly to parcel 114 at 44¢ per square foot or $120,173 before rounding.

With respect to subclassification, Mr. Scruggs contended that reference must initially be made to Tenn. Code Ann. § 67-5-801(c) which provides as follows:

(1) All real property that is vacant, or unused, or held for use, shall be classified according to its immediate most suitable economic use, which shall be determined after consideration of:

(A) Immediate prior use, if any;
(B) Location;
(C) Zoning classification; provided, that vacant subdivision lots in incorporated cities, towns, or urbanized areas shall be classified as zoned, unless upon consideration of all factors, it is determined that such zoning does not reflect the immediate most suitable economic use of the property.
(D) Other legal restrictions on use;
(E) Availability of water, electricity, gas sewers, street lighting, and public services;
(F) Size;
(G) Access to public thoroughfares; and
(H) Any other factors relevant to a determination of the immediate most suitable economic use of the property.

(2) If, after consideration of all such factors, any such real property does not fall within any of the definitions and classifications in this section, such property shall be classified and assessed as farm or residential property.

According to Mr. Scruggs, "[t]he continued, vacant, unused, unimproved partial woodland use of this property is indicative of the fact that the 'immediate most suitable economic use' is not commercial." Thus, Mr. Scruggs argued subject property should be subclassified residentially. Mr. Scruggs also cited several administrative decisions wherein the administrative judge or Assessment Appeals Commission concluded that the parcel in dispute should be subclassified as farm or residential property.

The assessor moved for a directed verdict at the conclusion of Mr. Scruggs' presentation. Mr. Zelinka asserted that the taxpayer failed to carry his burden of proof because no witnesses testified and no facts were stipulated to. In support of his motion, Mr. Zelinka relied on the administrative judge's recent ruling in *Concord Transaction Services LLC* (Shelby Co., Tax Year 2006).[1] ["*Concord Transaction*"] Like the present case, *Concord Transaction* involved the issue of subclassification and the parties were represented by Messrs. Scruggs and Zelinka. The administrative judge ruled that the taxpayer had not carried the burden of proof reasoning in relevant part as follows:

> The administrative judge finds that this case is unusual insofar as no witnesses testified and no formal stipulation of facts was placed in the record. Instead, the parties simply entered into evidence exhibits showing how properties in the immediate are used. The exhibit also identifies properties which have sold. . . .
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> * * *
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> Since the taxpayer is appealing from the determination of the Shelby County Board of Equalization, the burden of proof is on the taxpayer. See State Board of Equalization Rule 0600-1-

[1] The administrative judge's ruling has been appealed to the Assessment Appeals Commission.

> .11(1) and *Big Fork Mining Company v. Tennessee Water Quality Control Board*, 620 S.W. 2d 515 (Tenn. App. 1981).
>
> Respectfully, the administrative judge finds that the subclassification issue cannot be resolved without a formal stipulation of facts or testimony from at least one competent witness. . . . The administrative judge finds that counsel's comments . . . constitute little more than argument based upon assumed facts that have not been proven.
>
> Given the foregoing, the administrative judge finds that subject property should continue to be subclassified commercially based upon the presumption of correctness attaching to the decision of the Shelby County Board of Equalization.

Initial Decision and Order at 2.

The administrative judge finds that the assessor's motion for a directed verdict should be granted. As will be discussed below, the administrative judge finds that there is simply nothing in the record to substantiate the facts necessarily assumed by Mr. Scruggs in his analysis. Indeed, the administrative judge finds it simply amazing that not a single witness testified despite the drastic reduction in value and reclassification sought by the taxpayer.

The administrative judge has serious doubts concerning the applicability of *Goldsmith*. Nonetheless, the administrative judge will assume arguendo that with proper proof a reduction in value could be predicated upon a showing of the systematic undervaluation of a neighborhood.

The administrative judge presumes that the threshold issue when claiming systematic undervaluation concerns the boundaries of the neighborhood. The administrative judge finds Mr. Scruggs' analysis did not address this issue and must initially be rejected for this reason.

The administrative judge finds that Shelby County underwent a countywide reappraisal effective January 1, 2005. Thus, the administrative judge finds that for purposes of a claim of systematic undervaluation the relevant inquiry concerns the market value of the subject property and "comparables" as of that date. Respectfully, the administrative judge finds there is absolutely nothing in the record to substantiate Mr. Scruggs' assumption that the various sales summarized on page 2 of exhibit A reflect market value as of January 1, 2005. For example, the administrative judge finds that subject property was purchased from a bank that had acquired the property through foreclosure one month earlier. The administrative judge finds that sales out of foreclosure have historically been rejected by the State Board of Equalization as indicative of market value. See, e.g., *Armed Services Mutual Benefit Assoc.* (Assessment Appeals Commission, Davidson Co., Tax Years 1991 & 1992); and *Richard F. Laroche* (Assessment Appeals Commission, Rutherford Co., Tax Year 1994).

The administrative judge finds that the other sales considered in Mr. Scruggs' analysis suffer from similar deficiencies. For instance, three of the five comparable sales summarized at page 2 of exhibit A occurred in 2000 and 2001, but have not been adjusted for time. Moreover, no evidence was introduced to even establish whether the sales were arm's length transactions. Similarly, sale 3b occurred in 2007 and is simply irrelevant. See *Acme Boot Company and Ashland City Industrial Corporation* (Cheatham County - Tax Year 1989) wherein the Assessment Appeals Commission ruled that "[e]vents occurring after [the assessment] date are not relevant unless offered for the limited purpose of showing that assumptions reasonably made on or before the assessment date have been borne out by subsequent events." Final Decision and Order at 3.

The administrative judge finds that exhibit A also contains at page 3 a summary of the assessor's per square foot appraisals of 18 other parcels in the area. The administrative judge finds this information has no probative value because no proof was offered to establish the fair market value of those parcels. Furthermore, 16 of the 18 parcels are subclassified residentially and contain anywhere from 11,064 to 261,360 square feet. The administrative judge finds that merely comparing per square foot appraisals does not constitute sufficient evidence to establish either market value or a lack of equalization.

With respect to the issue of subclassification, the administrative judge finds Mr. Scruggs appropriately cited Tenn. Code Ann. § 67-1-801(c) as setting forth the factors to consider in determining the appropriate subclassification of vacant or unused property. However, as in *Concord Transaction*, the administrative judge finds that the subclassification issue cannot be resolved without a formal stipulation of facts or testimony from at least one competent witness.

ORDER

It is therefore ORDERED that the assessor's motion for directed verdict be granted and subject property continue to be assessed as follows:

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$1,800,000	$ -0-	$1,800,000	$720,000

It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization.

Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or

2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or

3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 31st day of July, 2007.

MARK J. MINSKY
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: David C. Scruggs, Esq.
Tameaka Stanton-Riley, Appeals Manager